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MAY 28 2004

OFFICE OF PETITIONS

In re Application of
Raphael Raptis et al
Application No. 10/600,267
Filed: June 20, 2003
Attorney Docket No. UPR-1610

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6) AND
: UNDER 37 CFR 1.181

This is a decision on the petition filed January 13, 2004, which is being treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional application set forth in the concurrently filed amendment. This is also a decision on the petition under 37 CFR § 1.181.

The petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is **DISMISSED**.

The petition under 37 CFR § 1.181 is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(I) and 1.78(a)(5)(I) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

Petitioner failed to submit an amendment to the first sentence of the specification following the title to include a proper reference to the prior-filed applications or an Application Data Sheet.

As to the petition under 37 CFR § 1.181:

Failure to timely submit the reference required by 37 CFR 1.78(a)(2)(I) is considered a waiver of any benefit claim under 35 U.S.C. § 120, 121 or 365(c) unless a petition to accept an unintentionally delayed claim under 37 CFR 1.78(a)(3), the surcharge set forth in 37 CFR 1.17(t), and the required reference, **including the relationship of the applications** (unless previously submitted) are filed. For example, if a benefit claim is submitted without the specific relationship between the nonprovisional applications before the expiration of the period, and the specific relationship between the nonprovisional applications is subsequently submitted after the expiration of the period, **a petition and the surcharge would be required**.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment or an Application Data Sheet to correct the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (703) 305-8859.

Karen Creasy

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